

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLIED UNDERWRITERS, INC. a)
Nebraska Corporation, and)
APPLIED RISK SERVICES, INC.,)
a Nebraska Corporation,)
Plaintiff(s),)
v.)
COMBINED MANAGEMENT, INC., a)
Maine Corporation, et al.,)
Defendant(s).)
_____)

No. C07-5129 BZ

**ORDER GRANTING MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

Plaintiffs are insurance brokers and agents that sued defendant, alleging that defendant failed to pay worker's compensation insurance premiums.¹ Defendant is a human resources company based in Maine. It contacted Virginia Surety Company, Inc., an Illinois based company, and inquired about purchasing worker's compensation insurance for its employees in Maine. Virginia Surety designated plaintiffs,

¹ All parties have consented to my jurisdiction pursuant to 28 U.S.C § 636(c) for all proceedings, including entry of final judgment.

1 based in Nebraska, as its agents to broker the insurance
2 policy. Plaintiff Applied Risk Services, Inc. is registered
3 to sell insurance in Maine. Plaintiff Applied Underwriters,
4 Inc. is the parent company. The parties negotiated the terms
5 of the policy over the telephone, via facsimile, and through
6 interstate mail. During all of the negotiations, the
7 individuals negotiating on behalf of plaintiffs were located
8 in San Francisco, California. Defendant's representatives
9 were aware that they were contacting and corresponding with
10 plaintiffs' representatives in California. The insurance was
11 ultimately placed with Virginia Surety, now known as Combined
12 Specialty Insurance Company. The policy was performed in
13 Maine, where the insured's employees were located, or in
14 Nebraska, where claims were processed and payments were
15 received.

16 Plaintiffs initially filed suit in Nebraska and defendant
17 successfully moved to dismiss the complaint for lack of
18 personal jurisdiction.² Plaintiffs refiled their action in
19 the Northern District of California and defendant has again
20 moved to dismiss for lack of personal jurisdiction.

21 The parties agree that California's long arm statute,
22 California Code of Civil Procedure § 410.10, allows the
23 exercise of personal jurisdiction on any basis provided under
24 the federal constitution. Plaintiffs contend that this court
25

26 ² Both plaintiffs and defendant have filed requests
27 pursuant to Federal Rule of Evidence 201 to take judicial
28 notice of facts contained in declarations filed in the initial
suit before the United States District Court of Nebraska. Both
requests are **GRANTED**.

1 has specific jurisdiction over defendant. In order to find
2 specific jurisdiction: "1) the nonresident defendant must have
3 purposefully availed himself of the privilege of conducting
4 activities in the forum by some affirmative act or conduct; 2)
5 plaintiff's claim must arise out of or result from the
6 defendant's forum-related activities; and 3) exercise of
7 jurisdiction must be reasonable." Roth v. Marquez, 942 F.2d
8 617, 620 - 21 (9th Cir. 1985).

9 "[T]he purposeful availment analysis turns upon whether
10 the defendant's contacts are attributable to 'actions by the
11 defendant *himself*' or conversely to the unilateral activity of
12 another party." Hirsch v. Blue Cross, Blue Shield of Kansas
13 City, 800 F.2d 1474, 1478 (9th Cir.1986) (quoting Burger King,
14 471 U.S. at 475, 105 S.Ct. At 2184) (emphasis in Burger King).
15 Here, defendant did not reach out to California. Instead, the
16 Nebraska plaintiffs, at the request of an Illinois insurer,
17 had their California representatives reach out to defendant in
18 Maine. Discussions over the telephone and the use of mail
19 when contacting a forum state are insufficient, alone, to
20 establish personal jurisdiction. See Roth, 942 F.2d at 622.
21 Defendant's telephone conversations and correspondence with
22 plaintiffs in California regarding an insurance policy with an
23 Illinois insurer that would be performed in Maine and Nebraska
24 do not amount to purposeful contacts with California such that
25 defendant would "reasonably anticipate being haled into court
26 [here]." World-Wide Volkswagen Corp. v. Woodson, 444 U.S.
27 286, 297 (1980).

28 That defendant entered into a contract with Combined

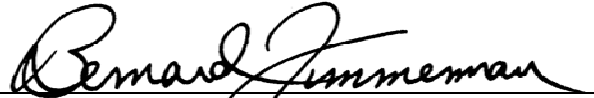
1 Specialty through plaintiffs' representatives located in
2 California does not establish sufficient minimum contacts in
3 this forum. See Burger King Corp. v. Rudzewicz, 471 U.S. 462,
4 478 - 79 (1985). A "'contract' is 'ordinarily but an
5 intermediate step serving to tie up prior business
6 negotiations with future consequences which themselves are the
7 real object of the business transaction.'" Id. quoting
8 Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316 - 17
9 (1943). In a contract case, the sufficiency of minimum
10 contacts is evaluated by examining the following factors:
11 "prior negotiations and contemplated future consequences,
12 along with the terms of the contract and the parties' actual
13 course of dealing." Burger King Corp., 471 U.S. at 479.

14 Plaintiffs contend that jurisdiction is appropriate
15 because the parties had a continuing relationship that
16 contemplated contractual performance in California.
17 Although the terms of the contract were negotiated with people
18 in California, the terms of the contract, the contemplated
19 future consequences of the contract and the parties course of
20 dealings do not support a finding of jurisdiction in this
21 forum. See Burger King Corp., 471 U.S. at 479. Defendant
22 contracted with plaintiffs to obtain worker's compensation
23 insurance for its employees who were located in Maine. In the
24 declaration of Todd Brown that plaintiffs filed before the
25 District Court in Nebraska, plaintiffs admit that they issued
26 the insurance policies in Nebraska, defendant's payments were
27 sent to Nebraska, the payments were processed in Nebraska,
28 customer services questions were directed to plaintiffs'

1 Nebraska office, claims were submitted to Nebraska, and claims
2 checks were processed, issued and forwarded from plaintiffs'
3 Nebraska office. Nothing before me indicates that the
4 contract for insurance was performed, or contemplated
5 performance, in California.³

6 Because I have found that defendant did not establish
7 sufficient minimum contacts with California to constitute
8 purposeful availment, I do not need to address the parties
9 remaining arguments. Defendant's motion to dismiss is **GRANTED**
10 and plaintiffs' case is **DISMISSED**.

11 Dated: December 5, 2007



Bernard Zimmerman
United States Magistrate Judge

14 G:\BZALL\BZCASES\Applied Underwriters v. Combined\Order Granting Motion to Dismiss.BZ
15 VERSION.wpd

25 ³ During oral argument, plaintiffs asserted that the
26 nub of the dispute was defendant's purported breach of a profit
27 sharing agreement with respect to premiums and that this
28 agreement had significant California contacts. Plaintiff also
admitted that the profit sharing agreement is not part of the
record. Accordingly, the purported breach of this agreement is
not properly before the court on this motion.